

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:

Review of the Commission's Broadcast  
and Cable Equal Employment Opportunity  
Rules and Policies

MM Docket No. 98-204

**Comments**



**I. Introduction**

On behalf of nearly 1,000 independent cable companies, the American Cable Association ("ACA") submits these comments to support the Commission's efforts to increase diversity in the workplace and to better accommodate the unique needs of smaller cable companies.

ACA's comments address two important issues:

- The policy applicable to broadcasters that excludes 20%-owners from being considered "employees" for purposes of the Commission's EEO rules should be extended to cable employment units.
- The number of Prong 3 menu options to be performed by cable employment units by September 30, 2003, should be reduced to account for the shortened implementation period between the effective date of the Commission's EEO rules, and the September 30, 2003, filing date of the annual report.

## II. The American Cable Association

Together, ACA's nearly 1,000 members serve about 7.5 million cable subscribers, primarily in smaller markets and rural areas in all 50 states. ACA members range from small, family-run cable systems to multiple system operators focusing on smaller markets. About half of ACA's members serve fewer than 1,000 subscribers. ACA members face special challenges building, operating, and upgrading broadband networks in smaller markets and rural areas.

For many smaller companies, compliance with EEO outreach, recordkeeping, and reporting requirements imposes substantial administrative burdens and costs and drains scarce resources from already lean budgets and staff. Accordingly, ACA members have a significant interest in the Commission's EEO policies and rules.

## III. The policy applicable to broadcasters that excludes 20%-owners from being considered "employees" should be extended to cable employment units.

In its Second Report and Order and Third Notice of Proposed Rule Making<sup>1</sup> the Commission adopted the following policy for broadcasters:

[W]e will not consider owners holding a 20 percent or greater voting interest in a licensee as station "employees" for EEO purposes. This will be subject to the proviso, however, that no single owner has positive control (greater than 50 percent voting control) of the licensee. In that circumstance, the principal enjoying positive control would be in a position to determine whether other stockholders could be employed at the station, and only he or she could properly claim employment as an incident of ownership.<sup>2</sup>

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<sup>1</sup> *In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, Second Report and Order and Third Notice of Proposed Rule Making*, FCC 02-303, MM Docket No. 98-204 (rel. Nov. 20, 2002) ("Second R&O").

<sup>2</sup> *Id.* at ¶ 173.

ACA proposes that the Commission extend this policy to cable employment units. Extending the policy will provide some of the smallest operators with much-needed regulatory and administrative relief; will further the Commission's efforts to conform the EEO policies applicable to broadcasters and cable operators; and will not significantly affect diversity in the workplace.

**A. Smaller cable operators need regulatory and administrative relief.**

Congress and the Commission have consistently expressed special concern for the ability of smaller cable systems to bear the costs and burdens of administrative obligations. The 1992 Cable Act and the 1996 Telecommunications Act both contain Congress' express recognition of this public interest through inclusion of specific small cable provisions.<sup>3</sup> Moreover, in dozens of recent orders granting waivers of its EAS requirements, the Commission has acknowledged the financial hardship faced by small cable systems.<sup>4</sup>

In the EEO context, Congress and the Commission have adopted less extensive EEO requirements for cable employment units with fewer than six and fewer than ten

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<sup>3</sup> 47 USC § 543(i) ("In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers."); Section 301(c) 1996 Telecommunications Act (providing greater deregulation for small systems), codified at 47 USC § 543(m).

<sup>4</sup> See, e.g., *Big Sandy Telecom, Inc., Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-094, DA 02-1328 (rel. June 21, 2002); *Lovell Cable TV, Inc.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-100, DA 02-1753 (rel. July 30, 2002); *Panora Cooperative Cable Association; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-155, DA 02-1333 (rel. June 21, 2002); *Souris River Television, Inc.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-090, DA 02-1275, (rel. May 31, 2002); *WMW Cable Television Co.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-068, DA 02-1277, (rel. May 31, 2002).

full-time employees.<sup>5</sup> These 6- and 10-employee thresholds still leave many very small cable companies to puzzle through managing compliance with outreach, recordkeeping, and reporting obligations on very limited resources. The Commission's new EEO rules entail a significant amount of recordkeeping and reporting and are a heavy burden for these small companies.

Extending the 20%-owner policy to cable employment units would provide much-needed relief for small cable operators. As the Commission recently recognized in the broadcast context:

This policy could assist small operators by reducing the number of full-time employees an entity would have when assessing its eligibility for a small entity exemption or other small business relief.<sup>6</sup>

For this reason alone, the Commission should extend its 20%-owner policy to cable employment units. But there are other good reasons to extend the policy.

**B. Extending the policy to cable employment units will help conform the broadcast and cable EEO policies.**

In its Second R&O, the Commission amended its EEO rules and policies applicable to cable operators and other MVPDs “to conform them, as much as possible, to the broadcast EEO Rule.”<sup>7</sup> Extending the 20%-owner policy to cable employment units will further this effort. There is no reason – statutory,<sup>8</sup> industry-specific, or otherwise – that the policy cannot or should not be extended to cable employment units.

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<sup>5</sup> See 47 USC § 554, which exempts cable employment units with fewer than six full-time employees from certain outreach, recordkeeping, and reporting requirements. See also *Second R&O* at Appendix C.

<sup>6</sup> See *Second R&O* at Appendix B(E) Final Regulatory Flexibility Analysis.

<sup>7</sup> *Second R&O* at ¶ 1.

<sup>8</sup> 47 USC § 554 contains no definition of “employee.”

**C. Extending the policy would not have a significant effect on diversity in the workplace.**

Extending the 20%-owner policy would provide relief to the very small operators that most need it – those with six to ten employees, who must comply with essentially the same EEO requirements as the largest cable operators.<sup>9</sup> At the same time, extending the policy would cause few cable employment units to be eligible for the small entity exemptions from the EEO rules. The effect on diversity in the workplace would be minimal.

Mathematically, an employment unit can have – at most – only five 20%-owners. This means that the 20%-owner policy can cause only employment units with six to ten employees to fall below the 6-employee threshold for the outreach, recordkeeping, and reporting exemptions.

The Commission estimates that in 1997, only 322 cable employment units employed between six and ten full-time employees.<sup>10</sup> Extending the 20%-owner policy to cable employment units would affect only a portion of these employment units.<sup>11</sup> Therefore, any impact on diversity would be extremely small.

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<sup>9</sup> The outreach, recordkeeping and reporting requirements for cable employment units with 6 – 10 employees are basically the same as those for larger operators, except that they need perform only one Prong 3 menu option annually. See *Second R&O* at Appendix C. Cable employment units with fewer than six full-time employees are exempt from select outreach, recordkeeping, and reporting requirements under 47 USC § 554 and the Commission's EEO rules.

<sup>10</sup> Initial Regulatory Flexibility Analysis at Appendix E, Section D.3. According to 1997 Census Bureau data, there were 1,563 firms in the Cable and Other Program Distribution category. See <http://www.census.gov/prod/ec97/97s51-sz.pdf>.

<sup>11</sup> For example, an employment unit with eight full-time employees and two 50% owners would still have 6 employees after the application of the 20%-owner policy, and would not be eligible for the exemptions applicable to employment units with fewer than 6 employees.

**IV. The number of Prong 3 menu options to be performed by cable employment units by September 30, 2003, should be reduced to account for the shortened implementation period between the effective date of the Commission's EEO rules, and the September 30, 2003, filing date of the annual report.**

The Commission's new rules will not become effective until either March 10, 2003, or upon receipt by Congress of a report in compliance with the Congressional Review Act, 5 USC 801, whichever is later.<sup>12</sup> However, the Commission's rules require most cable operators to participate in 1-2 Prong 3 menu options in the 12-month period preceding the filing of an EEO program annual report.<sup>13</sup> The EEO program annual report must be filed by September 30, 2003. This gives cable employment units, at most, six and a half months to perform the Prong 3 menu options.

The Commission noted the shortened period for broadcasters, and accordingly reduced the menu options to be performed proportionally to the amount of time available.<sup>14</sup> ACA requests that the Commission clarify that this reduction also applies to cable employment units.

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<sup>12</sup> See 69 Fed. Reg. 670-01 (January 7, 2003) at ¶ 156.

<sup>13</sup> See *Second R&O* at Appendix C (amended Section 76.75(b)(2)).

<sup>14</sup> See *Second R&O* at ¶ 119.

## **V. Conclusion**

ACA and its members fully support increasing diversity in the workplace. At the same time, the EEO rules impose substantial administrative and regulatory burdens on many small cable operators. Extending the 20%-owner policy to cable employment units would go a long way toward easing the burden imposed on some of the smallest operators, as would reducing the number of Prong 3 menu options to be performed in 2003.

Respectfully submitted,

**AMERICAN CABLE ASSOCIATION**

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